

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
TACOMA DIVISION

Jeffrey S. Aldan,

Plaintiff,

NO. 3:20-CV-05694

v.

THE HOME DEPOT, U.S.A., INC., d/b/a  
THE HOME DEPOT #4720, a Foreign  
Corporation,

Defendant.

HOME DEPOT, U.S.A., INC.'S  
ANSWER AND AFFIRMATIVE  
DEFENSES TO PLAINTIFF'S  
COMPLAINT

JURY DEMAND OF TWELVE  
*[CLERKS' ACTION REQUIRED]*

COMES NOW Defendant Home Depot U.S.A., Inc. (hereinafter "Home Depot") by and through its counsel of record, Holt Woods & Scisciani LLP, and hereby submits its Answer and Affirmative Defenses to Plaintiff's Complaint by admitting, denying, and alleging as follows:

**I.**

Home Depot lacks sufficient information to admit or deny the allegations set forth in Paragraph I and therefore denies the same.

**II.**

Home Depot lacks sufficient information to admit or deny the allegations set forth in Paragraph II and therefore denies the same.

**III.**

Home Depot admits that it was a foreign corporation organized under the laws of the State of Delaware and conducting business in Pierce County, Washington. Home Depot further admits that it owned, operated and maintained a retail store located at 4602 Center Street in Tacoma, Washington. The remainder of the allegations set forth in Paragraph III appear to call for a legal conclusion and thus no response is required. To the extent a response is required, and unless specifically admitted, Home Depot denies.

**IV.**

Home Depot lacks sufficient information to admit or deny the allegations set forth in Paragraph IV and therefore denies the same.

**V.**

Home Depot denies.

**VI.**

Home Depot denies.

**VII.**

Home Depot denies.

**VIII.**

Home Depot denies.

**IX.**

Home Depot denies. Furthermore, Plaintiff's prayer for relief, inclusive of Paragraphs 1 – 5, does not contain any factual allegations and therefore no response is required. To the extent

1 there are any factual allegations to which a response is required, Home Depot lacks sufficient  
2 information to form a belief as to the truth or falsity of the allegations contained in this paragraph  
3 and therefore denies that Plaintiff is entitled to the relief sought.

4 **X. HOME DEPOT'S AFFIRMATIVE DEFENSES**

5 BY WAY OF FURTHER ANSWER TO PLAINTIFF'S COMPLAINT AND WITHOUT  
6 WAIVING ANY ALLEGATIONS PREVIOUSLY DENIED, THE FOLLOWING  
7 AFFIRMATIVE DEFENSES ARE ASSERTED IN GOOD FAITH. HOME DEPOT ALLEGES  
8 AS FOLLOWS:

- 9 1. Plaintiff's Complaint fails to state a claim upon which relief can be granted.
- 10 2. Home Depot asserts herein all defenses stated in Fed. R. Civ. P. 12(b) in so far as  
11 they may be applicable and, thus, are not waived.
- 12 3. Plaintiff may have failed to join a necessary party under Fed. R. Civ. P. 19.
- 13 4. The action should be dismissed to the extent Plaintiff's alleged damages, if any,  
14 resulted from superseding intervening acts or omissions of other persons and/or entities over  
15 which Home Depot had no responsibility or control.
- 16 5. Plaintiff's action should be dismissed because Plaintiff's alleged damages may  
17 have resulted from alleged acts or omissions by other persons and entities for which Home Depot  
18 had no responsibility or control, including Plaintiffs, and fault should be apportioned accordingly.  
19 RCW 4.22.070.
- 20 6. Plaintiff may have failed to mitigate his damages.
- 21 7. Plaintiff's claims may be barred by the statute of limitations.
- 22 8. Plaintiff's injuries or damages, if any, may have been proximately caused in whole  
23 or in part by the actions and/or negligence of other non-parties, other third-parties, and/or  
24 unknown or unnamed persons or entities.
- 25 9. Plaintiff's alleged damages have resulted from Plaintiff's own failure to exercise  
26 ordinary care or by the Plaintiff's own recklessness and/or negligence.

1           10. Plaintiff's Complaint should be dismissed because Plaintiff's alleged injuries  
2 resulted from an open and obvious condition.

3           11. Plaintiff's injuries and damages, if any, may not be actionable because Plaintiff  
4 voluntarily, knowingly, expressly or implicitly consented to (including but not limited to the warning  
5 of an open and obvious condition), and/or assumed the risk of, the situation which caused Plaintiff's  
6 harm, if any.

7                                   **XI. HOME DEPOT'S JURY DEMAND**

8           Pursuant to Fed. R. Civ. P. 38(b), Home depot hereby demands a trial by a jury of twelve  
9 (12).

10                                  **XII. HOME DEPOT'S RESERVATION OF RIGHTS**

11           Home Depot reserves the right to amend any of the above answers upon further discovery.  
12 Home Depot also reserves the right to bring counter-claims and/or cross-claims against Plaintiffs  
13 and any known or unknown third-party defendants as may be necessary upon further discovery.  
14 Home Depot also reserves the right to add, delete, or revise any affirmative defense already pled  
15 or to be pled in the future upon further discovery. Finally, Home Depot reserves the right to  
16 amend its prayer for relief upon further discovery.

17                                  **XIII. HOME DEPOT'S PRAYER FOR RELIEF**

18                                  WHEREFORE, having answered Plaintiff's Complaint, and having asserted its  
19 affirmative defenses, Home Depot requests that judgment be entered as follows:  
20

21           1. That Plaintiff's Complaint be dismissed with prejudice, and Plaintiff takes nothing  
22 thereby;  
23

24           2. An award against Plaintiff for Home Depot's expenses and costs incurred herein,  
25 including reasonable attorneys' fees as permitted by law; and  
26

DATED this 17<sup>th</sup> day of July, 2020

s/Kelsey L. Shewbert  
s/Charissa Williams  
Kelsey L. Shewbert, WSBA No. 51214  
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Charissa Williams, WSBA No. 54879  
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Attorneys for Defendant Home Depot U.S.A., Inc.

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that the following is true and correct:

I am employed by the law firm of Holt Woods & Scisciani LLP.

At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served the document(s) to which this is attached, in the manner noted on the following person(s):

PARTY/COUNSEL	DELIVERY INSTRUCTIONS
<b><u>CO /Plaintiff</u></b> Daniel L. Hannula Michael S. Clark Rush, Hannula, Harkins & Kyler LLP 4701 South 19 <sup>th</sup> Street, Suite 300 Tacoma, WA 98405 dhannula@rhhk.com	<input checked="" type="checkbox"/> <b>Via U.S. Mail</b> <input checked="" type="checkbox"/> <b>Via E-Mail</b> <input type="checkbox"/> <b>Via Messenger Service</b> <input checked="" type="checkbox"/> <b>Via Court E-Service</b>
<b><u>CO/Plaintif</u></b> Michael S. Clark Law Offices of Michael S. Clark 705 S. 9 <sup>th</sup> Street, Suite 202 Tacoma, WA 98405 mike@tacomainjurylawattorneys.com	<input checked="" type="checkbox"/> <b>Via U.S. Mail</b> <input checked="" type="checkbox"/> <b>Via E-Mail</b> <input type="checkbox"/> <b>Via Messenger Service</b> <input checked="" type="checkbox"/> <b>Via Court E-Service</b>

DATED this 17<sup>th</sup> day of July, 2020 in Seattle, Washington.

s/ Christie Kramer  
Christie Kramer, Legal Assistant